STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Plainville Board of Education

Appearing on behalf of the Parents/Student: Attorney Piper A. Paul, Law Office of Nora A. Belanger, LLC, 10 Wall Street, Norwalk, CT 06850

Appearing on behalf of the Board of Education: Attorney Nicole A. Bernabo, Robinson & Cole, 280 Trumbull Street, Hartford, CT 06103

Appearing before: Attorney Elisabeth Borrino, Hearing Officer

FINAL DECISION AND ORDER

ISSUES

1. Whether the Student should be placed in a diagnostic evaluative placement at the Manchester Clinical Day School ("MCDS") in Manchester, CT;

2. Whether the Student should be residentially placed at the F.L. Chamberlain School ("Chamberlain") for 2008-2009;

3. Whether the Board failed to provide FAPE for 2006-2007, summer 2007, 2007-2008, summer 2008, and 2008-2009;

4. Whether there was a breach of confidentiality;

5. Whether the Board failed to convene a PPT.

PROCEDURAL HISTORY

This matter is before the Hearing Officer pursuant to the Board's request for a Due Process Hearing on September 8, 2008. On September 17, 2008, the Parent filed a response to the Board's request for a Due Process Hearing and counter-complaint which raised several issues. A prehearing conference was held on September 22, 2008. The parties agreed that all issues would be consolidated and heard in this matter. Both parties were represented by counsel and hearing dates were selected. The parties

appeared on the following hearing dates: October 15, 27, 29, 30, 31, November 7, 13, and 20, 2008. Witnesses called by the Parent included the Parent; Maureen Schiffer, Director of Special Education for the Board; Dr. Steven Mattis, the

Student's treating Neuropsychologist; Dr. Demitri Papolos, the Student's treating Psychiatrist; and Emily Lannigan, the Student's therapist from Chamberlain Witnesses called by the Board included Jill O'Donnell, Director of Education for Intensive Education Academy ("IEA"); Martha Nunes, Associate Director of Education Services for Northwest Village School ("NVS"); Maureen Schiffer; Dr. Marshall Gladstone, Board Psychologist; and Dr. Irene Abramovich, Board Psychiatrist.

The issues addressed during the Due Process Hearing were raised at Planning and Placement Team ("PPT") meetings on January 3, 2008, May 14, 2008, June 11, 2008, and August 26, 2008.

By way of its request for Due Process Hearing, the Board requested that the Hearing Officer convene a prehearing conference to determine whether an interim order should be issued to (1) override the Parent's refusal to provide consent to allow an independent neuropsychologist and psychiatrist, as chosen by the Board, to review the Student's records, and (2) whether to override the Parent's refusal to provide consent to the Board to speak with Chamberlain about programming and services as it specifically related to the Student. The Board and the Parent resolved both of these issues during the proceedings. Dr. Gladstone and Dr. Ambramovich were afforded full consent to review the Student's records and testified during the Hearing. The Board was provided full consent to speak with Chamberlain. Ms. Schiffer also performed an on site visit and observation.

The Board has not challenged the sufficiency of the Parents' Due Process Hearing request and there is no claim by either party that the prehearing resolution meeting requirements were not pursued.

The hearing concluded on November 20, 2008. The Hearing Officer directed the parties to submit their respective post hearing Briefs by December 8, 2008.

The date for mailing of the final decision was November 22, 2008. However, upon joint motion of the parties, in order to be able to present necessary multiple witnesses and evidence, and after careful consideration of the following factors:

> (1) the extent of danger to the child's educational interest or well being which might be occasioned by the delay;
>
> (2) the need of either party for additional time to prepare and present their position

at the hearing in accordance with the requirements of the process;

(3) any financial or other detrimental consequence likely to be suffered by a party in the event of the delay;

(4) whether there has already been a delay in the proceeding through the actions

of the parties.

The date was extended to January 2, 2009.

STATEMENT OF JURISDICTION

This matter was heard as a contested case pursuant to Connecticut General Statutes ("CGS") §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administration Procedures Act ("UAPA"), CGS §§ 4-176e to 4-178, inclusive, §§4-181a and 4-186.

SUMMARY

The Student has serious psychiatric and behavioral issues as well as significant learning disabilities. The Board identified the Student with a disability of Emotional Disturbance so as to require special education services when he was in second grade. This identification was later changed to Other Health Impaired ("OHI"). The Student was thereafter removed from public school and placed in two separate therapeutic day schools. He has been hospitalized six times for psychiatric issues and is under the ongoing care of a psychiatrist and a therapist.

On June 5, 2008, the Student was involuntarily discharged from the IEA due to serious behavior incidents. On June 11, 2008, the Board recommended he thereafter be placed at High Road, a therapeutic day school, for both 2008 ESY and the 2008-2009 school year; and requested that he be evaluated by the Board's Psychiatrist.

The Student's treating Psychiatrist, Neuropsychologist, and Therapist were all recommending residential therapeutic placement. The Parent disagreed with the Board's recommendation and request. On August 26, 2008, the Board recommended that the Student be placed for approximately eight weeks at the MCDS for evaluations and testing.

The Parent rejected this recommendation and unilaterally placed the Student at Chamberlain, a therapeutic residential placement in Massachusetts upon the recommendation of the Student's treating Psychiatrist, treating Neuropsychologist, and Therapist. The Board disagreed with this placement.

This Final Decision and Order sets forth the Hearing Officer's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, *see SAS Institute, Inc., v. S & H Computer Systems, Inc*., 605 F. Supp. 816, (March 6, 1985); and *Bonnie Ann F. v. Callallen Independent School District,* 835 F. Supp. 340 (S.D. Tex. 1993).

Any motions not previously ruled upon are hereby denied.

FINDINGS OF FACT

1. The Student was first identified for special education and related services under the category of Emotional Disturbance during a Planning and Placement Team meeting ("PPT") on February 13, 2004. At the time, the Student was a 7-year old, second grade student who had received interventions since kindergarten with inconsistent results. (Exhs. B-14, B-15)

2. The Student was diagnosed with bipolar childhood onset disorder, and prescribed medication. Areas of concern included reading, with specific weaknesses with decoding and encoding skills, off-task behaviors, physical aggression, and impulsivity. The initial academic assessment found the Student's overall achievement in the WJ III as in the average range in reading, math, writing and academic knowledge. At that time, the Student's program entailed a resource room, pullout model with 4.0 hours of individualized instruction in the areas of reading and writing, .5 hours of counseling with the school psychologist, and a behavioral intervention plan ("BIP"). (Exhs. B-14, B-15)

3. From January 7, 2005 through January 21, 2005, the Student was hospitalized at Hall-Brooke Hospital, a psychiatric hospital. The Student had been suspended from school for failure to follow directions two weeks prior to this hospitalization. The Student transitioned back to school. Thereafter, there continued to be serious behavioral incidents at school. (Testimony Parent; Exhs. B-2, B-15, B-16, B-17, B-19, B-20)

4. On April 13, 2005, a PPT was convened. There was disagreement regarding a school recommendation to change the Student's program and placement to a smaller setting in the Board's Connections Program, an in-district therapeutic program. The Parent refused the recommendation. The PPT agreed to modify the Student's mainstream pullout program with additional accommodations and services. (Exhs. B-23, B-34 to B-40, B-42)

5. On September 20, 2005, a PPT was convened wherein the Board again recommended the Connections Program. The Parent again rejected this recommendation, and the PPT therefore modified the Student's program by amending

the behavioral plan, certain goals and objectives and added service hours. The Board agreed to hire a behavioral consultant, Dr. Mitch Beck. (Exhs. B-23, B-32, B-33, B-34 to B-40, B-42)

6. On November 29, 2005, a PPT was convened wherein the Board revised the IEP to reflect new behavioral goals and one-to-one paraprofessional support; and agreed to additional consultation from the behaviorist and re-evaluations. (Testimony Parent; Exhs. B-43, B-45, B-46)

7. On December 9, 2005 through December 21, 2005, the Student was admitted to Saint Francis Hospital. Two weeks prior thereto, he had been suspended from school after being physically restrained by school staff. While the Student was hospitalized, school staff contacted the Parent to discuss a working draft functional behavioral assessment ("FBA"). (Exhs. B-47, B-48, B-49, B-51)

8. On December 21, 2005, the Student was discharged from the in-patient psychiatric unit at Saint Francis Hospital with a recommendation "that he will be discharged to his mother's care with a continuity of care plan in place that includes therapy with his outpatient therapist and a referral to Wheeler Clinic extended day program." At that time, the Student was discharged on 5 mg of Abilify. His diagnosis included Attention Deficit Hyper-active Disorder ("ADHD") and R/O bipolar disorder. (Exh. B-52)

9. In December 2005, the Parent retained Dr. Steven Mattis, a Board Certified Clinical Neuropsychologist, to evaluate the Student and provide recommendations. The results were provided to the Board. (Testimony Parent; Exhs. P-4, P-5)

10. From December 2005 through January 2006, the Student deteriorated whereby Dr. Mattis recommended that the Student be placed in a therapeutic placement. (Testimony Dr. Mattis, Exh. P-7)

11. By way of letter dated February 8, 2006, Dr. Mattis, recommended that "until [the Student] is medically stable, a therapeutic school is the most appropriate educational setting. Once he is medically stable, then one can expect normalization of behavior and inclusion classes can be reconsidered for educational intervention of learning disability." (Exh. B-67)

12. By way of letter dated February 9, 2006, Wheeler Clinic stated that the Student was experiencing auditory hallucinations, extreme anxiety, and behavioral dysregulation, due to the effective instability and ongoing psychosis. As noted in letters from School personnel, there was great concern regarding current mental status and his ability to remain safe and stable as well as stated concerns that the School is unable to provide the level of care he currently requires. The letter further recommended that the Student

be out-placed in a therapeutic school to address current stated difficulties, provide for his safety, and provide the high level of ongoing intensive treatment that the Student currently needs. Homebound instruction was also recommended and provided by the Board pending the placement. (Exh. B-68)

13. On February 9, 2006, the PPT recommended a change of placement to a therapeutic day-treatment school. Northwest Village School ("NVS") at the Wheeler Clinic was to be considered first if openings were available. If openings were not available, homebound tutoring was to be provided if placement was not available within five days. (Testimony Parent, Testimony Schiffer, Testimony Nunes; Exh. B-69)

14. On February 22, 2006, after evaluating the Student, Dr. Papolos opined that there was a serious problem handling the Student's aggressive behavior in the school setting and indicated that "clear and appropriate plans need to be developed to avert the occurrence of this behavior." Further, that the use of restraint and seclusion could result in aggression due to fearfulness or perceived or misperceived threat. These aversive measures "typically induce greater fearfulness in the child and produce a worse outcome." He made clear it would be unsafe to put the Student in a time-out room alone because he could bang his head and injure himself. (Testimony Papolos, Testimony Mother; Exh. P-8)

15. By way of letter dated February 15, 2006, Ms. Schiffer notified the Parent that the Student had an intake scheduled for March 1, 2006 at NVS. (Exh. B-75)

16. By way of letter dated March 13, 2006, while the Student was receiving homebound tutoring, the Parent notified the Board that she was observing the Student in the beginning of a medical episode. The Parent requested that the Student not be obligated to take the Connecticut Mastery Test ("CMT's") because he was too medical fragile to withstand "the stress of the testing experience and is not safe or appropriate to continue." Dr. Mattis concurred with the Parent and notified the Board by way of letter dated March 16, 2006. (Exhs. B-77, B-78)

17. On March 20, 2006, the Student was placed at the NVS, a therapeutic school, part of Wheeler Clinic, and has been in operation for over 35 years. The school accepts student referrals from public school districts involving students who require more intensive educational and therapeutic services. The Student's program at NVS included individualized special education services, clinical services (*e.g.*, psychological counseling, behavioral management), occupational therapy ("OT"), and included PE, art, music, computer services specialist, and a library. The Student received a 45-minute weekly socialization group within his classroom and individual counseling for 30-minute sessions weekly, in addition he was able to access Ms. Donahue, as needed. It was determined at that time that the most appropriate level was Level 3, Miss Pease's classroom, based on the ages of the students, the grade levels of the students, and their

level of social sophistication. Occupational therapy consultation was recommended in order to monitor the Student's graphomotor and sensory processing needs and to assist with adjustments to his program as necessary. The Student's individual plan included various multisensory and therapeutic strategies throughout the day including, for example, the use of three "coupons," which allowed him to present a coupon at his discretion and take a gross motor break. (Testimony Nunes; Exhs. B-69, B-83, B-152, B-260)

18. The Student at times became verbally and physically aggressive, particularly toward staff. This led to the use of Level III interventions, including therapeutic holds and closed-door time-out, as well as a restriction following a significant assault on staff in the spring 2006. Martha Nunes, Associate Director of the NVS, and Dr. Elizabeth Donahue, clinical psychologist, scheduled a meeting with the Parent on or about April 27, 2006 to review the Student's use of time-outs and therapeutic holds and to further clarify any concerns with the Student's behavioral program. (Exhs. B-27, B-81, B-82, B-97, B-145, B-147, B-260)

19. The Student adjusted to the NVS setting and his behaviors improved. The classroom teacher had ongoing communication with the Parent through daily communication logs and direct phone contact. The counselor also had ongoing communication with the Parent. It was noted in Dr. Donahue's spring report that the Student was seen in the spring of 2006 at Wheeler Clinic's children's outpatient program for psychiatric care and individual therapy and at that time, was prescribed Abilify and Trileptal. The Student's outpatient providers and school personnel communicated closely to insure continuity in his programming and planning. (Testimony Nunes; Exhs. B-89, B-91)

20. On May 16, 2006, the PPT reviewed and revised the Student's program based on the Student's performance, Parent reports, and recommended continued placement at the NVS for the 2006-2007 school year. The Parent had received copies in advance of the information to be discussed at the PPT. A triennial evaluation was also planned and an updated Assistive Technology evaluation was agreed to commence over the summer. Extended school year ("ESY") services at NVS were also recommended as a means of recouping educational programming due to gaps during the previous year. It was proposed that he receive such services from July 6 to August 9, 2006. The PPT was in agreement with the proposed recommendations of the PPT, including the IEP goals, objectives and BIP, and the services for the 2006-2007 school year. There were specifically tailored goals and objectives proposed for the year. Proposed accommodations included consumable work books, manipulatives, preview of test procedures and prior notice of tests, hands-on projects, new handwriting penalty, grading modification, and various other multisensory approaches. In addition, multiple behavioral interventions and support including daily feedback, structure of transitions, break between tasks, time-out from positive reinforcements, set back/post class rules, and a

behavioral management plan were recommended. Occupational therapy consult was also recommended for sensory diet strategies. (Testimony Nunes, Testimony of Parent; Exhs. B-87, B-88, B-91)

21. From September 4, 2006 through September 22, 2006, the Student was hospitalized at the Institute of Living at Hartford Hospital ("IOL") for approximately three weeks due to a psychotic episode. Educational services were provided during the hospitalization. On September 21, 2006, the Parent notified the Board that the Student would be discharged from the hospital on September 22, 2006. Upon his return after the hospitalization, there were fluctuations in the Student's behavior. (Testimony Nunes; Exhs. B-98, B-99, P-16, P-21)

22. During October 2006, the Parent called the help line at the Wheeler Clinic for assistance when the Student was refusing to attend school. Dr. Donahue went to the Student's home to help remediate the issue. In November 2006, the Parent once again called the Wheeler Clinic hotline reporting school avoidance and Dr. Donahue once again drove to her home. A teacher (Ms. Young) and a paraprofessional arrived with the school van. The Student was physically carried out of the home without shoes or a shirt and was forcibly placed in a prone position face down in the school van and driven to school. As soon as he arrived, he was sent to a time-out room. Later that same day, he was placed in the time-out room where he urinated when he was not allowed to use the bathroom. The Student was forced to finish his time and clean up the urine. The Parent notified Ms. Nunes of her concern regarding the above incidents. (Testimony Parent, Testimony Nunes; Exhs. B-260, P-29)

23. In October 2006, the Parent alerted NVS, the Board, and the bus company about ongoing safety concerns when the Student was being transported via school bus. There were two separate bus incidents within a three week period wherein the Student was injured, and a third incident involving an altercation. Thereafter, the Student was transported alone and a bus monitor was not assigned. Ms. Nunes was unaware that the Student was being transported alone in response to these incidents. (Testimony Parent, Testimony Nunes; Exhs. P-22, P-23)

24. On or about November 2, 2006, after complaints from the Parent regarding a fight on the Student's bus, the Board requested changes to the transportation. (Exh. B-100)

25. While placed at NVS, the Student was disciplined for sleep inertia when school staff opined that the Student was sleeping to avoid work. The Parent unsuccessfully complained to NVS about this practice. (Testimony Parent, Testimony Nunes; Exh. B-260)

26. On December 8, 2006, a PPT convened to review the Student's program,including the assistive technology. The Board provided NVS with the word

prediction software as identified in the assisted technology evaluation. Additionally, the Student used a typing tutor up to two times a week with the occupational therapist. It was also noted that NVS clarify a list of all modifications in place for the Parent. It was recommended that the PPT reconvene on or before February 13, 2007 to review the triennial evaluations. The Parent did not request any further changes to the Student's program at that time. (Testimony Parent; Exhs. B-101, B-102, B-106, B-107)

27. In January 2007, the Parent had informed Dr. Donahue that she was transferring the Student's psychiatric care to Dr. Dimitri Papolos. (Testimony Parent, Testimony Nunes)

28. Psychological testing performed from November 13, 2006 through January 19, 2007 by Stephanie Bozak, B.A., a Psychology Extern as part of the triennial evaluation revealed that the Student's overall performance on the Wechsler Intelligence Scale for Children (WISC IV) fell within the borderline range of intellectual functioning with a Full Scale score of 73. The Student's scores in the four composite areas of this test indicated that he was functioning in the extremely low to low average range. (Exh. B-110)

29. On April 5, 2007, a PPT was convened to review the triennial evaluations and review and revise the IEP as necessary. The PPT noted poor academic and behavioral achievement. At this PPT, the Parent disagreed with the psychological testing and requested an independent neuropsychological evaluation. The Board disagreed but nevertheless agreed to the independent evaluation. The PPT recommended OT as a direct service for 30 minutes per week. No objections, other than the disagreement with the psychological evaluation, were raised by the Parent regarding the Student's program. (Testimony Nunes, Testimony Schiffer, Testimony Parent; Exhs. B-115 through B-119)

30. On April 9, 2007, Ms. Schiffer provided the Parent with the Board's policy for Independent Educational Evaluations, when the parent requested an independent neuropsychological evaluation. Ms. Schiffer disagreed with having the IEE as it involved putting the Student through another battery of tests. Ms. Schiffer relied upon that the Student (a) does not like to be tested and does not perform optimally, (b) he would be better served by curriculum based measures that may guide the team to different instructional approaches which may have better outcomes, (c) although his poor academic growth is disconcerting, it is important to remember that the Student has been work avoidant for the majority of his prior several years of schooling. Ms. Schiffer urged the Parent to reconsider her request for an IEE. (Exh. P-34)

31. On April 14, 2007, the Parent wrote a letter to Ms. Schiffer noting her concern regarding the "persistent and pervasive undertone" that the Student is responsible for his "failure to learn or make meaningful progress." (Exh. P-35)

32. From April 16, 2007 through April 19, 2007, the Student was hospitalized at the IOL at Hartford Hospital. (Exh. P-36)

33. On May 11, 2007, the PPT conducted the annual review. The Student was deemed eligible for ESY due to his inconsistent educational availability during the school year. The PPT also agreed to change the Student's identified disability as Other Health Impaired ("OHI"), even though it believed that Serious Emotional Disturbance ("SED") was more appropriate. The PPT noted concerns that the Student had variable attention and effort, was easily overwhelmed, had poor work completion and engagement. An FBA was not recommended. The Student failed to master any of the goals or objectives; and is noted to have made minimal progress in many of the objectives. (Exhs. B-121, B-125)

34. According to the May 11, 2007 IEP, the Student required small group or individualized instruction for all academics, small group instruction throughout his school day, and a behavior management plan that includes time out. He was noted to be inconsistent in his academic and behavioral performance and to now require direct OT services. He was outplaced and to receive 5.5 hrs. daily special education services, 5.5 hours academic support from outplacement school staff for July 9, 2008-August 10, 2007, .5 hrs. weekly counseling with the school counselor, and .5 hrs OT with a 5.5 hour school day, 5 days per week for 36 weeks. His objectives included demonstrating appropriate school behavior. He was noted to have made satisfactory progress on many of his goals, and limited progress on others. He failed to master any goals. (Exh. B-125)

35. The Board arranged for an evaluation by Ms. Gmeindl. On June 18, 2007, Ms. Schiffer provided the Parent with information regarding the types of tests Ms. Gmeindl intended to administer to the Student. During July 2007, Ms. Gmeindl administered academic assessments including the LAC (auditory sequencing); WADE (sound/symbol, decoding, encoding); CTOPP (phonological processing); GORT (oral reading, comprehension, fluency); GSRT (silent reading, comprehension); Key Math; Test of Written Language (TOWL). The Student was unable to phonologically segment and manipulate sounds given to him auditorally. He was unaware of the order of sounds in words and not able to auditorally manipulate those sounds. Overall, the Student demonstrated poor abilities in holding information in working memory. In the area of rapid naming, the Student scored in the poor range. It was also noted that two subtests segmenting words and segmenting non-words were difficult for the Student to complete. In WADE, the Student achieved a total of 4.0 in the area of reading real words in isolation. This level was significantly delayed given the Student's age and grade. The area of reading high frequency irregular words (sight words) was a strength for the Student. He was able to read approximately 86% of the words presented to him. In the GSRT, the Student scored a silent reading quotient of 84 (low average range). On the GORT-4, the Student scored an oral reading quotient of 64 (very poor range). On the Lindamood-Bell Auditory Conceptualization Test, which measures auditory perception

and conceptualization of speech sounds, the Student scored a total converted score of 51. This test measures Student's awareness, perception, and conceptualization of speech sounds. It is noted that the Student's behavior may have interfered with his performance on this test. On the Test of Written spelling (TWS-2), the Student received scores in the poor and very poor range. In the TOWL-3, the Student also received standard scores in the poor below average range. Overall, on the Key Math-R, the Student scored in the average range. The protocols of these tests were sent to Dr. Belliveau by Ms. Gmeindl as part of the independent assessment review. (Exhs. B-136, B-137, P-44)

36. The July 2007 evaluation by Ms. Gmeindl recommended that the Student would benefit from a multisensory approach to learning. Information that is presented visually, then presented again auditorally, and finally with kinesthetic or tactile input would give the Student the benefit of adding a little more information with each repetition; use reading approaches that feature systematic explicit instruction in phonological awareness and phonetic decoding skills; use reading approaches that feature systematic explicit instruction in reading fluency skills, repetition and a hand on approach in the learning environment, continuing to strengthen sight word vocabulary, and continuing a positive behavior plan. (Exhs. P-44, B-136, B-137)

37. The Student began the 2007-2008 school year on a new middle school team with Miss Congdon. Overall, the Student adjusted positively to the new structure and increased expectations. There were students that he was familiar with in that class as well as several new students. On or about September 21, 2007, the NVS team met with the Parent and her educational advocate to review the Student's program and an agreement was reached regarding the classroom policy of "owed time" as a result of Parent concerns regarding this specific behavioral intervention. (Testimony Nunes; Exhs. B-153, B-154, B-155)

38. In September 2007, the Student was transferred from the fourth grade to the sixth grade at NVS. His teacher, Ms. Condon, had a policy for incomplete homework which involved negative consequences. The Parent advised the teacher of the Student's scheduling conflict due to medical appointments and requested an exception. The request was denied. (Testimony Parent; Exh. P-48)

39**.** On September 25, 2007, the Student's behavior escalated resulting in a psychiatric visit to the hospital emergency room. (Testimony Parent, Testimony Schiffer; Exh. P-148)

40. While NVS is a therapeutic day school, there are time-out rooms with cinder block walls, linoleum/tile floors, and wooden doors that lock from the outside only to prevent students from escaping. Despite the fact the Student was known to bang his head, he was placed in the concrete time-out rooms repeatedly without protection, and engaged in

head banging, as well as urination and vomiting, which he was forced to clean up. The Student spent over two week's time in restraint and seclusion during the eighteen months he was at NVS. This did not include Level I interventions, or time spent in the time-out room with the door open. (Testimony Parent, Testimony Nunes; Exh. B-260)

41. NVS did not have a certified behaviorist on staff or on the Behavior Management Committee. If a child is put into a time-out room and not allowed to leave, as long as the door is left open, NVS did not consider this to constitute seclusion. The Parent repeatedly expressed her concerns regarding the use of restraint and seclusion; and requested that a functional behavior assessment be done. The Board did not comply with this request. (Testimony Parent, Testimony Nunes; Exh. P-29)

42**.** When NVS determines that a student's behavior is "not appropriate" she/he must go behind a divider and sit alone on the floor for five minutes in order to "earn" the right to return to the classroom. Students must also "earn" the ability to each lunch with peers on a daily basis. Failure to earn this privilege results in the student eating lunch alone at the student's desk. (Testimony Nunes)

43**.** The Student made limited progress during the 2006-07 school year while attending NVS. The Student failed to master any of the 9 goals or 26 objectives. (Testimony Parent, Testimony Nunes; Exhs. P-10, B-260)

44. On September 25, 2007, Ms. Schiffer conducted a telephonic PPT to discuss a change in the Student's school placement, per the Parent's request because she claimed that the new behavior system in the Student's classroom caused him to be upset and escalated his behavior. Further, that he had to be taken to the hospital emergency room. While NVS staff maintained that they continued to have an appropriate program in place for the Student, the Board agreed to change the Student's placement at the Parent's insistence. The Parent agreed to homebound services until a new placement was determined. The Board authorized the Parent to visit several placements, including Ben Bronz's Academy, IEA, CCMC School in Wethersfield, and Grace Webb in Hartford or Cheshire Campus. There were no objections by the Parent to these recommendations at this PPT meeting. The Parent was a full participant in this process. (Testimony of Parent, Testimony Schiffer; Exh. P-148)

45, After investigating the proposed placements, the Parent determined that Ben Bronze would not accept him because of his behaviors and that the Grace Webb school was similar to NVS in their behavior management program. A decision was ultimately reached to place the Student at IEA. (Testimony Parent, Testimony Schiffer; Exh. P-148)

46. On September 28, 2007, Dr. Timothy Belliveau, from the Hospital for Special Care and who is Board Certified in Clinical Neuropsychology performed a Neuropsychological Evaluation of the Student by way of an agreed upon IEE and a copy of the report was

provided to the Board. Dr. Belliveau performed a thorough record review, additional testing, consulted with the Board, Parent, and the Student, and determined that the Student had regressed in intellectual functioning and had an adjustment disorder reactive to his underlying learning disabilities. Dr. Belliveau noted that phonics, written expression, and mathematical skills were well below expectations for the Student's academic grade level and that he needed intensive support in these areas. He stated particular attention should be paid to "triggers for frustration, threats to self-esteem, and the pitfalls of behavioral avoidance style…" He noted the Student is capable of greater academic progress than has been evident recently and that he had the potential to make significant academic progress. (Testimony Parent; Exhs. B-186, B-201, P-46)

47. From September 27, 2007 through October 19, 2007, the Student received one to two hours per day of homebound tutoring with no related services. The Board failed to provide related services during the periods of homebound. (Testimony Parent)

48. By way of letter dated October 1, 2007, the Parent rejected CCMC and the Grace Webb Schools of the IOL because "we don't want to put him back into a program that is so similar to the one we just removed him from." The Ben Bronz Academy, according to the Parent, was not able to meet the Student's social and emotional needs and were not receptive to the idea of a student with a bipolar diagnosis. The IEA, according to the Parent, may be appropriate but they could not meet with the Parent until October 15, 2007. (Exh. B-157)

49. On October 9, 2007, the Student was referred to IEA, a special education school in West Hartford, Connecticut. On October 15, 2007, IEA staff conducted an intake with the Parent and Student. The intake process was extended for the Student because IEA staff were trying to ensure that the placement would be an appropriate one for the Student. The Student visited IEA for approximately three weeks and was accepted into the program on or about November 19, 2007. (Testimony O'Donnell; Exhs. B-163, B-165, B-182)

50. Prior to actual acceptance at IEA, the Student had a probationary period for nearly three weeks. During that time the Parent was required to be present. The Student attended school for an average of two hours per day. (Testimony Parent, Testimony O'Donnell)

51. On or about October 4, 2007, Dr. Belliveau's neuropsychological examination report was received and reviewed by the PPT in November 2007. Dr. Belliveau noted that the Student's general intellectual functioning is measured in the borderline range (Full Scale IQ equals 78), not significantly different than the IQ scores obtained at the time of two previous assessments during the past two years. The profile of cognitive-intellectual functioning was notable for average performance on tasks that are predominantly verbal and language-based (Verbal Comprehension Index equals 93), and average performance on tasks that are largely non-verbal/visual-spacial in nature

(Perceptual Reasoning Index equals 90). In contrast, the Student's processing speed was exceptionally slow (Processing Speed Index equals 65). Attention and concentration abilities are measured in the borderline range (Working Memory Index equals 77). The diagnostic impressions of Dr. Belliveau were disorder of written expression, adjustment disorder with mixed disturbance of emotions in conduct, and bipolar disorder, NOS (provisional diagnosis). He recommended a highly structured special education environment. Dr. Belliveau opined that the Student was more likely to make academic progress with additional time in small group and/or one-to-one instruction. Further, that the Student's reading pace is very slow and that he needed frequent redirection to tasks and response to inattention or avoidance, limit setting in response to inappropriate behavior, frequent verbal praise and encouragement, a structured system of reinforcement and consequences, and intensive support for phonics skills, written expression and mathematics. Other recommendations included continued occupational therapy intervention, continued student and parent consultations, continued participation in classroom-based socialization group. (Exh. B-183)

52. On October 19, 2007, an auditory processing evaluation was performed by Christina Lee, AuD, CCC/A. Ms. Lee recommended a speech and language evaluation. Ms. Lee identified an auditory processing disorder that is a contributing factor to his learning difficulty. The speech evaluation was not performed. (Testimony Parent, Testimony Schiffer; Exh. P-51)

53. On November 19, 2007, the PPT recommended that the Student would begin IEA as a full time student, that IEA staff will use the current IEP established in May 2007 without change, and that the PPT would re-convene on January 4, 2008 to revise the IEP as needed. There were no objections asserted by the Parent regarding the PPT recommendations at this meeting. (Exhs. B-125, B-186, P-53)

54. From December 11, 2007 to December 19, 2007, the Student was admitted to Hallbrook Hospital due to a psychiatric episode. (Exh. B-197, B-198)

55. On January 3, 2008, a PPT convened to review the Student's program and review and revise his IEP as necessary. In addition, the PPT discussed the Student's recent hospitalization. The PPT recommended that the Student return to school on a shortened academic day until stability was noted over at least a five day period. Once stable, the Student would gradually increase his school day. IEA indicated that any further physical aggression would prompt a PPT to discuss another placement. IEA was to put all core academic instruction, reading, writing, and math as well as related services (OT and counseling) in the morning. The Parent indicated her intent to enroll the Student in a partial hospital program. (Testimony O'Donnell; Exhs. B-201, B-228-B-229, B-228)

56. According to the January 3, 2008 IEP the Student then required intensive direct instruction in reading and spelling, supports in auditory processing, poor working memory, requiring assistive technology, and he had not been exposed to grade level

social studies and science "for the last few years." He is noted to have low frustration tolerance, can misread social cues, has bipolar disorder, adjustment disorder, vision impairment, sleep disorder NOS, poor visual/motor integration, difficulties with modulation and arousal, and required direct OT services to assist him in his modulation and integration, his sense of kinesthetic awareness requires a sensory diet which includes gross motor, self-simulation and module tools. The IEP's goals and objectives note declining progress and he had mastered none. The IEP provides for 30.75 schools hours per week, with 28.75 special education. His school day was to be 6.15 hours, five days per week. He was placed in IEA. He was to receive small group/individual special education instruction 5.75 hours daily, OT 1.0 hrs. per week, and counseling 1.0 hrs per week with the school counselor. (Exh. B-201)

57. The Parent did not report concerns with the Student's educational program at IEA prior to the January 2008 PPT. (Testimony Parent, Testimony O'Donnell)

58. From January 5, 2008 through May 13, 2008, IEA did not provide the Student with instruction in science, social studies, or specials as his day was shortened. His counseling was reduced to fifteen minutes due to the shortened work day and his services were reduced. (Testimony O'Donnell, Testimony Parent)

59. On January 3, 2008, PPT recommended that the Student needed to return to a purely academic day and would return on January 5, 2008 for 5 days per week in order to assess his stability after the hospitalization. During this time period, the Student was to gradually earn back specials which were rewarding and to determine whether or not his behavior was stable enough to proceed to a longer school day. The PPT also discussed extending the Student's annual review to June 2008 to allow the Student more time to achieve current goals and objectives. The Parent agreed with the PPT recommendations. The PPT discussed the fact that the Student was being dismissed at 11:00 a.m. Additionally, the PPT discussed whether or not science and social studies would be courses the Student would receive as part of his shortened day and the PPT unanimously agreed to cut these academics and work on these subjects individually. The January 3, 2008 PPT acknowledged that the Student had made very poor progress on virtually all of his identified goals. (Testimony Parent, Testimony O'Donnell; Exhs. B-201, P-55)

60. During the inclusive period of January 5, 2008 through May 13, 2008, the Board failed to implement the Student's January 3, 2008 IEP. The Board failed to provide the requisite school hours, hours of special education instruction, OT, and Counseling. (Testimony Parent, Testimony Nunes; Exh. B-201)

61. On or about March 21, 2008, the Parent reported to IEA staff that the Student began treatment for his thyroid deficiency with a new medication, Cynthroid. The Student was noted to not be on task in school. The Parent requested that the Student return to the earlier 11:00 dismissal schedule. (Testimony O'Donnell; Exhs. B-207, B-

208, B-210)

62. From April 2, 2008 through April 10, 2008, the Student was hospitalized at Natchaug Hospital due to psychiatric issues. (Exh. P-57)

63. On or about April 24, 2008, the Parent submitted a form stating that she wanted the Student to continue at IEA for the 2008-2009 school year. (Testimony O'Donnell; Exh. B-211)

64. Prior to the May 14, 2008 PPT, the Parent called Ms. Schiffer to inform her about a letter from Dr. Papolos indicating that he was going to recommend a therapeutic residential school for the Student. (Testimony Schiffer; Exh. B-214)

65. In May 2008, both Dr. Papolos and Dr. Corson recommended that the Student be placed in a residential placement. Both Dr. Corson and Dr. Papolos have been the Student's treatment providers and are very familiar with his needs. (Testimony Dr. Papolos; Exhs. B-220, B-221)

66. Dr. Papolos has extensive expertise in the Student's disorder. Dr. Papolos is a pediatric psychiatrist who has won multiple scholarly honors and awards. He has been the Director of Research for the Juvenile Bipolar Research Foundation since 2001. He is on multiple Academic Committees, provides clinical supervision of Chief Residents in Psychiatry, and is a lecturer in this field. He has authored over forty professional articles, as well as the seminal book on the subject of pediatric bipolar disorder. Dr. Abramovich, the Board's Psychiatrist attested that he is a renowned expert on Pediatric Bipolar Disorder and well-regarded by his peers, He has worked with the Juvenile Bipolar Research Foundation to design, develop, and implement web-based protocol to enable expert diagnosticians to rate research cases. (Testimony Dr. Papolos, Testimony Dr. Abramovich; Exh. P-87)

67. Dr. Corson is a Licensed Professional Counselor. (Exh. P-86)

68. On May 14, 2008, the PPT convened, discussed the Student's program and made revisions to include a one to one paraprofessional, additional behavior tracking, and full days effective May 19, 2008. The Parent reported that the Student had been medically unstable since April 28, 2008. The PPT estimated approximately sixteen school days of medical stability in 2008. The Parent presented letters from Dr. Papolos and Dr. Corson, recommending a therapeutic residential placement. The Board and IEA disagreed with these recommendations. The Parent did not formally request a change in placement but indicated her concern to get the Student back on a full day program now that he was medically stable. (Exhs. B-217, B-218, B-220, B-221)

69. The PPT recommended High Road School and opined that it could accommodate the Student's need for individualized instruction, sensory plan, and respond to his

physical aggression. The PPT also recommended that Dr. Abramovich, the Board's consulting psychiatrist, evaluate the Student. (Exh. P-63)

70. According to the May 14, 2008 IEP, the Student was to increase to full days with a one to one support. He was performing below grade level across all academic areas, is noted to become easily frustrated and shuts down frequently, continued to have inconsistent academic and behavioral performance, and is to receive 5.75 hours of daily special education with small group individual instruction, 1.0 hours weekly of occupational therapy, and 1.0 hour weekly of counseling with the school counselor/social worker. The length of the school day was 5.75 hours, five days per week. He was to receive a total of 28.75 school hours weekly of which all were special education. (Exh. P-59)

71. On June 5, 2008, the Student was suspended due an incident that escalated where he became physically aggressive and struck two staff members. After this incident, IEA did not believe that its setting was safe for the Student due to the level of physical aggression that he had exhibited. IEA involuntarily discharged the Student but held the discharge for the June 11, 2008 PPT. IEA opined that the Student was terminated for a more restrictive program due to safety concerns. (Testimony O'Donnell, Testimony Schiffer; Exh. P-64)

72. On June 11, 2008, a PPT was convened and agreed that IEA was no longer appropriate for the Student because of the physical aggression. Placements were discussed. The IEP goals and objectives were discussed and modified; the PPT discussed a possible placement at High Road to begin in the summer for ESY. The Parent disagreed with the recommendation for High Road, having previously investigated and rejected that placement. Residential placement was discussed but IEA and the Board did not recommend a residential placement for the Student. The Parent requested that the Student not be placed elsewhere until a decision regarding placement was made. Thereafter, the Parent requested additional time to visit High Roads and to postpone the June 23, 2008 PPT in order to give her an opportunity to do so. (Testimony Parent, Testimony Schiffer, Testimony O'Donnell; Exhs. B-228, B-229, B-230, B-241)

73. According to the June 11, 2008 IEP, the Student continued to perform below grade level, now has "anxiety and fears of failure across all academic areas, requires continuous behavior management throughout the day, his aggressive behavior has become a safety risk in the setting, he is daily frustrated and "feels bad about himself." He is diagnosed with bipolar disorder, lithium is now at therapeutic levels, hospitalization at Nachaug on April 15, 2008 is noted. He is noted to need a one to one aide. The Student was to receive 5.75 hours of daily special education, 1.0 hours per week of counseling with the school counselor/social worker, and 1.0 hours per week of occupational therapy. His school day was to be 6.15 hours, five days per week. Total school hours per week were to be 30.75 of which 28.75 hours was to be special

education. (Exh. P-63)

74. On June 11, 2008, the PPT informed the Parent that the Student would not be allowed to return to IEA, and the Board would not agree to a therapeutic residential placement. The Board only offered High Road for ESY, and to continue for the 2008-2009 school year. No other options were considered. The PPT was unable to agree on placement. The Parent needed more time to decide. The Parent acknowledged that the Student would not attend school at that time due to placement disagreement. The Board requested a psychiatric evaluation be done by the Board's psychiatrist, Dr. Abromovich as it was in disagreement with Dr. Papolos and Dr. Corson. The Board requested that the Parent sign a release to allow a formal referral to High Road. The PPT also determined that the Student was eligible for ESY services with placement to be determined. The Board believed that a therapeutic residential setting was too restrictive and that the Parent had not allowed the previous setting at NVS to fully implement the Student's behavior plan. (Testimony Parent; Exh. B-229)

75. Although the Board proposed High Road for both ESY 2008 and school year 2008-2009, it is not clear what information the Board relied upon in making this recommendation or what factors were considered in determining how placement at High Road would meet the Student's needs and provide FAPE. The Board did not consider any other options at that time.

76. By way of a letter dated June 18, 2008, the Parent notified the Board that High Road could not accommodate her visit until July 1, 2008. Hence, the Parent requested that the June 23, 2008 PPT be postponed. The Board granted this request but made no other arrangements for the provision of ESY. (Testimony Parent, Testimony Schiffer; Exh. P-65)

77. The Parent went to High Road on 7/1/08 to observe the school. She rejected this placement because the restraint and seclusion policy was comparable to NVS - and contrary to the recommendation of Dr. Papolos. The Student would have to work independently for over two-thirds of the day. There were also safety concerns based on a 2005 visit when the Parent observed a teacher barricading herself and students inside her classroom with a desk. (Testimony Parent, Testimony Dr. Papolos)

78. The Board attempted to reschedule the PPT throughout July 2008 and offered several Fridays in July to reschedule the PPT. The Parent rejected these dates as she was unavailable, and suggested dates at the beginning of August. August 7, 2008 was initially selected to reconvene the PPT, however, the Student's special education teacher from IEA was in a serious car accident and the meeting was rescheduled until later in August. The teacher had participated fully in the June 11, 2008 PPT, had no contact with the Student thereafter, and the August 7, 2008 PPT was a continuation of the June 11, 2008 PPT. (Testimony Schiffer, Testimony Parent)

79. The Board did not fail to convene a PPT during June and July 2008. Instead, a number of factors –including the Parent's unavailability in July 2008 caused the PPT to be delayed. The Board could have convened the PPT on August 7, 2008 but believed that the IEA special education teacher should be present and delayed the PPT to August 26, 2008. (Testimony Parent, Testimony Schiffer)

80. The Parent visited High Road on July 1, 2008. She thereafter rejected High Road as a placement option and promptly notified the Board. (Testimony Parent, Testimony Schiffer)

81. On August 26, 2008 a PPT convened for the limited purpose of discussing placement. The Parent was represented by counsel at the meeting, and provided the District with an updated report from Dr. Mattis. After discussion, the PPT was unable to come to an agreement regarding the Student's program and placement. The Board recommended diagnostic placement at MCDS to conduct evaluations which included behavioral, OT, speech and language, cognitive achievement. The Parent rejected this recommendation and placement. (Testimony Schiffer, Testimony Parent)

82. During the August 26, 2008 PPT, the Parent requested therapeutic residential placement at Chamberlain. The Board disagreed as it needed additional information and claimed it was not aware of this placement prior to the PPT despite that the Parent had provided the recommendations of Dr. Papolos, Dr. Mattis and Dr. Corson to the Board in May 2008 and June 11, 2008. The Board requested that the Parent execute a release so it could speak with Dr. Mattis regarding his evaluation as the report was not received until the morning of the PPT. The Board also requested that the Parent execute releases for Dr. Papolos and Dr. Corson as well as for Chamberlain. The Board requested a social worker home assessment which the Parent refused as there were minimal home concerns and previous services. The PPT recommended reconvening to review and revise the IEP once the Student was enrolled in a diagnostic placement. (Testimony Parent, Testimony Schiffer; Exh. B-247)

83. The August 26, 2008 IEP provided for 6.5 hours of special education instruction daily, 1.0 hours per week of OT, and 1.0 hours per week of counseling with the school counselor/social worker. The school day was to be 6.5 hours, five days per week for 36 weeks. He was recommended for diagnostic placement in a clinical day school for evaluative purposes. (Exh. B-247)

84. The identified purpose of the PPT was only to discuss placement. IEA stated what was stated at the June 11, 2008 PPT - that it could no longer provide a program to the Student due to his physical aggression and need for restraint.

85. The PPT's recommendation for the diagnostic placement was reportedly based on that more information was needed, the PPT was not aware that there was a request for residential placement prior to the PPT, and the PPT wanted a release to speak with Dr.

Papolos, Dr. Corson and Dr. Mattis. The Board also had no specific information regarding Chamberlain. However, the Parent notified the PPT in both May and June 2008 of the recommendation by Dr. Papolos for residential placement. (Testimony Schiffer, Testimony Parent; Exh. B-247)

86. Dr. Mattis is a Board Certified Clinical Neuropsychologist who has authored articles such as Differential neuropsychological profile of children with bipolar and those with ADHD. He has conducted extensive research in those areas and authored studies. He is the former head of the Department of Psychiatry at Cornell, and he has extensive experience and expertise in treating children with major psychiatric disorders. Dr. Mattis has been one of the Student's providers and is very familiar with the Student and his needs. (Testimnony Dr. Mattis; Exh.P- 88)

87. On July 25, 2008, Dr. Mattis evaluated the Student and determined that the Student required a residential therapeutic school environment which could provide a twenty-four hour structured experience by boarding at the therapeutic school. He had not demonstrated academic gains since he was evaluated in 2005. Instead, not only was there no improvement in academic skills but they seem to be "poorer on the 2008 than they were in 2005." All of the Student's scores were at the impaired level. (Testimony Dr. Mattis; Exh. P-70)

88. The Student requires modifications to address his dysnomia and expressive dysphasia. These include language and speech therapy which is critical. Every shift that is required of the Student is disorganized. When evaluated by Dr. Mattis, the Student was noted to be quite fragile, and needing predictability, safety, and as routine an environment as possible, in order for him to feel safe, in order for him to be able to cope with the daily events. Restraint as a behavioral mechanism would be terrifying to the Student. (Testimony Dr. Mattis)

87. On August 26, 2008, Dr. Papolos reiterated his recommendation that the Student be residentially placed and endorsed placement being at Chamberlain. (Testimony Dr. Papalos; Exh. B-246)

88. On August 28 and 29, 2008, Ms. Schiffer contacted the Parent in an attempt to reconvene the PPT on September 3, 2008. By way of letter dated September 2, 2008, the Parent claimed that she received the notice too late to participate in the proposed PPT and provided a release for the Board to speak with Dr. Corson, Dr. Papolos and Dr. Mattis on the condition that she participate in the call as the Parent had concerns about the manner in which the Board had interracted with the Student's providers. By way of letter dated September 3, 2008, Ms. Schiffer again attempted to schedule a PPT to discuss the diagnostic placement, and obtain consent to speak with Chamberlain staff and for the requested evaluations. (Testimony Parent,Testimony Schiffer; Exhs. B-251, B-252, B-253, B-254 through B-255)

89**.** During the August 26, 2008 PPT, the Board proposed a diagnostic placement for

eight weeks at MCDS to determine an educational program and collect behavioral data. Evaluations proposed included OT, speech and language, cognitive, and achievement. Conducting evaluations for OT, speech and language, cognitive and achievement do not require placement at MCDS. (Testimony Schiffer)

90. The Board has already received the results of extensive evaluations and testing of the Student. The Board failed to establish that evaluations for OT, speech and language, cognitive and achievement were required in order to propose an appropriate placement for 2008-2009. (Testimony Parent, Testimony Schiffer; Exhs. P-4, P-5, P-12, P-27, P-30, P-32, P-33, P-43, P-44, P-45, P-46, P-51, P-62, P-70, P-76, P-85, B-12, B-13, B-22, B-26, B-39, B-74, B-83, B-88, B-101, B-108, B-113, B-114, B-120, B-121, B-122, B-126, B-137 through B-144, B-169, B-183, B-249)

91. The Board has extensive behavioral data from the Student's previous educational placements. The Board failed to explain what additional behavioral data it expected to obtain by way of a temporary diagnostic placement at MCDS so as to warrant such placement. (Testimony Schiffer, Testimony Parent; Exhs. P-49, B-27, B-95, B-97, B-227, B-145, B-147, B-148, B-149, B-260)

92. The Parent rejected the diagnostic placement and requested outplacement at Chamberlain. (Testimony Parent, Testimony Schiffer)

93. On September 22, 2008, the Parent and her husband met with Kay Tapper, Program Director for MCDS. Ms. Tapper informed the Parent that because the Student's academic performance is so low, the curriculum only goes down to the fourth grade level, and his avoidant behaviors so intense, the Student would not be a candidate for the program. (Testimony Schiffer; Exhs. P-81, P-92)

94. The Student failed to progress during the 2007-08 school year while attending IEA. The IEP has eleven goals and forty-nine objectives, none of which were mastered. (Testimony Parent; Exh. B-201)

95. By way of letter dated September 8, 2008, the Parent indicated her intent to enroll the Student at Chamberlain on September 11, 2008. Because of her concerns regarding how the Board had reportedly acted previously in interactions with providers, the Parent refused to allow the Board to speak further with Chamberlain without participating in the call or during the visit, and also reiterated that she was refusing the diagnostic placement and testing, except if the testing was done over school breaks or done by Chamberlain staff. The Board offered to have Dr. Marshall Gladstone evaluate the Student at Chamberlain as well as to have Dr. Abramovich evaluate the Student on October 13, 2008 which is a school holiday. The Parent was concerned about the qualifications of the evaluators, what tests would be administered, and refused to execute a consent without that information. (Testimony Parent, Testimony Schiffer; Exh. B-256)

96. Dr. Papolos, a renowned expert in childhood onset bi-polar disorder, has been the

Student's treating psychiatrist for several years. The Student has been diagnosed with childhood onset bipolar disorder, rapid cycling based on symptoms including psychotic symptoms, parasomnias (arousal disorder of sleep), carbohydrate cravings and temperature disregulation. (Testimony Dr. Papolos)

97. The Student has a diagnosis of rapid cycling whereby the development is arrested until stabilization is achieved. Rapid cycling means that there are abrupt rapid mood swings within the course of the day where the mood can switch from being either neutral to extremely irritable, silly, goofy, giddy and then back into a low arousal depressed state where everything is wrong, no one loves him, and he feels responsible for all that is bad in the world. There are also seasonal changes, as seen in the Student, in spring and fall. The Student's progress would be slow. The Student's medication, I.Q., learning disabilities and bipolar will complicate his learning. As the child matures, cognitive behavioral therapy can be introduced. Dr. Papolos recommended a twenty-four hour residential school for the Student. Although he has not personally visited Chamberlain, he is aware of Chamberlain and recommends this placement for the Student. (Testimony Dr. Papolos)

98. The Student's treatment has included multiple mood stabilizers and atypical anti-psychotics, which are major tranquilizer. He also receives Melatonin to foster sleep. His medication regime has been modified at times depending on the Student's growth. (Testimony Dr. Papolos)

99. As the Student matures, he will develop increased cognitive capacity and reach a stage where he has insight into his problems. At that point, he can engage in cognitive psychotherapy whereby he is taught the nature of his illness and try to develop alternative strategies. (Testimony Dr. Papolos)

100. Each of the Student's hospitalizations were due to his uncontainable violent behavior. (Testimony Dr. Papolos)

101. The Student has poorly regulated attention focus. Commencing with sixth grade his academic performance is more difficult as the demands for executive functioning through written expression, for instance, will become "horrendously frustrating" unless there has been appropriate remediation. The Student has great difficulty making transitions from one context to another. This is a part of executive function – once engaged in an activity shifting the focus of attention to something else is experienced as a threat because of the effort required to do so. Such transitions include going to school which is often a major factor in impeding the learning process since the Student "can't get there." (Testimony Dr. Papolos)

102. The Student requires a therapeutic residential setting to meet his needs at this time. He has sleep inertia, severe school avoidance, feelings of shame and humiliation as he is not able to perform to the school's expectation and the Parents had to fight on a daily basis to get him to school. The Student needs a residential setting in order to

minimize transitions and enable his therapy to be encompassed during the day and the night. Where he would not be required to go through the kinds of transitions that have thus far impaired his capacity to learn. (Testimony Dr. Papolos)

103. In 2006, the Student had rages at least two to three times per week, which were usually defensive, and common to children who have early onset bipolar disorder. Whenever there is limit setting or anything that is intended to restrain the Student, there is an immediate response that is aggressive and uncontrollable depending the mood state that he is in. Restraining the Student in this instance is inappropriate. Instead of remedying the problem, it augments it and foster a "fight or flight" response." Restraint and seclusion exacerbates the problem. (Testimony Dr. Papolos)

104. Chamberlain is an approved therapeutic residential school in Massachusetts that provides special education and therapeutic treatment on a 12 month schedule. It serves approximately 110 students with overlapping educational and emotional disabilities through a curriculum that includes core academics and extracurricular subjects. There are approximately 150 people on staff, including a clinical director who is a licensed social worker, ten Master's level clinicians, two consulting psychiatrists reachable 24 hours a day, and twenty-four hour residence staff. Chamberlain has a positive behavioral management program, no time-out rooms, and provides opportunities for the Student to interact with non-disabled peers. (Testimony Parent, Testimony Lannigan; Exh. P-147)

105. The Student is currently enrolled at Chamberlain which has approximately 110 students currently enrolled, about ten percent of which are day students. The Student lives on campus in a home with 14 other male students, ages 12-18. He has two roommates. He is the lowest functioning student in the classroom and does not have devoted 1:1 support. The Student must stay within "eye shot" of the classroom and there is no OT classroom with equipment for him to use. Elizabeth Naumowicz and Matt Kearn are the Student's teachers, and they are not certified in special education. (Testimony Lannigan, Testimony Schiffer)

106. The Student receives therapy twice a week, once with Ms. Lannigan, whose first job has been at Chamberlain, and he also receives services with another clinician, who is not licensed and is an intern. Ms. Lannigan is not certified to deliver cognitive behavioral therapy with the Student as of November 7, 2008. The Student is taking math, language arts, literature, science, phys. ed, and elective courses such as Spanish. He also received support from the Title I teacher. There is a behavioral support program where the students earn points throughout the day for positive behavior. Based on the percentage of behavior that they earn throughout the day, they progress on a level system which is composed of four levels with various privileges awarded to each level. (Testimony Lannigan, Testimony Schiffer)

107. There are seven other students in the class with the Student, along with two

teachers. Academics are 7.5 hours per day and the Student has attended all days. The Student attends class with the same seven students and all his classes are held in one room, with the exception of a few specials, thereby mitigating the need for transitions. He receives individual counseling two times a week, group counseling one time per week, OT several times a week, and reading instruction 2-3 times per week with a Wilson based reading program. Furthermore, he is involved in the volunteer afterschool homework club where he receives additional assistance, as well as homework help from resident staff. He receives much 1:1 instruction, and has played on a soccer team that interacts with non-disabled peers, and has interacted with non-disabled peers at the YMCA. (Testimony Parent, Testimony Lannigan, Testimony Schiffer, Exh. P-147)

108. Ms. Schiffer had concerns about the program at Chamberlain. (Testimony Schiffer)

109. As of September 11, 2008, the Student had been rejected from the Grove School, Devereux-Glenholme, The Learning Clinic, and Little Keswick School. (Testimony Parent)

110. The Student has remained at Chamberlain, has not been hospitalized despite the fact the fall is a very difficult time for him, and has continued to make progress. (Testimony Parent, Testimony Lannigan, Testimony Dr.Papolos)

111**.** Since being at Chamberlain, the Student now believes he is a "learner" and has made progress by participating in the classroom, going to the blackboard, applying coping skills, participating in class and in the residence, and writing his longest book report to date. (Testimony Parent, Testimony Lannigan, Testimony Schiffer)

112. Since being at Chamberlain all of the reports are excellent. He adapted well. The Student is more available to learning and is progressing in the academic areas that he could not do before. He is more stable, there is less need to modify his medication, he has more control over himself than he has had in the past - "all of the things that you would hope that a good school. . . would do for . . . a child like [the Student]". (Testimony Dr. Papolos)

113. The Student has had extensive diagnostic assessments. The nature of his condition is known, the neuropsychological testing has identified his deficits and strengths. It would be detrimental to the Student to pull him out of a program that's for the first time helping him succeed, and put him into a program that is unnecessary and would retard his progress. "It is a set up for disaster and a very bad plan." (Testimony Dr. Papolos)

114. Although the Student was previously placed in a therapeutic day school, that placement was unsuccessful. (Testimony Dr. Papalos)

115**.** The Student has been making progress on his therapeutic goals and utilizes cognitive behavioral therapy (CBT). He displays increased motivation to work, is less work-avoidant, and has made steady progress. All of the current reports are excellent. It is common for students to fluctuate on the point and level system and therefore this is not necessarily a reflection of progress, or lack thereof. The Student is not a candidate for the day program because of his emotional needs. The residential component is important for him. To date, he has never been physically restrained, only physically escorted when he initially separated from his Parents. (Testimony Dr. Papolos, Testimony Lannigan; Exh. P-148)

116. Dr. Demitri Papolos is the Student's psychiatrist and one of the leading experts in pediatric bipolar disorder. The Student has rapid cycling bipolar, which is the most difficult form of bipolar illness to treat. The illness rarely produces continuous stability, but that stability should not be dispositive to the Student's ability to learn. Restraint and seclusion should be avoided. The Student faces tremendous daily difficulties with transitions. Dr. Papolos recommends a therapeutic residential setting that has educators trained and well versed in dealing with mood disorders and psychiatric disorders, who realize the behaviors are not intentional. An appropriate setting must be structured, with small classrooms, minimal transitions, and positive behavioral supports to prevent the escalation of behaviors and to enable the child to progress academically, emotionally, behaviorally and socially. The Student is cognitively impaired but able to learn. (Testimony Dr. Papolos; Exhs. P-8 ,P-9, P-58, P-76, P-87, P-89)

117. The Student requires a residential placement, which is critical, as therapy encompasses day and night. The Student is at a serious crossroads based on past negative experiences in school related to inadequate understanding of the nature of his illness and how to deal with it as well as the association of school with humiliation, shame, failure, and inability to progress. This must change to enable the Student to learn. Chamberlain is well regarded for behavioral therapy and positive reinforcement. Since the Student has been at Chamberlain, he is more available to learn, has more self control, is progressing in academic areas, and is requiring fewer medication modifications. (Testimony Dr. Papolos; Exhs. P-8, P-9, P-58, P-76, P-87, P-89)

118**.** The Student has been repeatedly evaluated over the past several years. The Board has each of these evaluations, some of which were by the Board and other by the Student's providers. His education needs appear to be undisputed. While the Board desires certain evaluations, nothing in the record establishes that the Student requires diagnostic placement in order to perform these evaluations. Indeed, all of the evaluations suggested by the Board to be performed in the diagnostic placement are typically performed on students without such placement. (Testimony Dr. Papolos, Testimony Parent, Testimony Schiffer)

119. While the Board asserts its intent to obtain behavioral information by way of a diagnostic placement at MCDS, there is ample behavioral information already provided

to the Board as well as available from IEA and NVS. (Testimony Schiffer, Testimony O'Donnell, Testimony Nunes, Testimony Parent)

120**.** Dr. Steven Mattis, the Student's neuropsychologist, evaluated him in 2005 and again in 2008. In 2008, he did a comprehensive record review, spoke with the Student, the Parent, and prior evaluators. Dr. Mattis is a neuropsychologist, who specializes in evaluating children with bipolar disorder and whose qualifications were not challenged by the Board. He noted regression in the Student's cognitive functioning. Dr. Mattis opined that a therapeutic residential program is necessary to enable the Student to learn, maintain psychological well being, and to keep him out of the hospital. The Student is vulnerable and requires much more intensive intervention than what is available from a therapueutic day setting. (Testimony Dr. Mattis; Exh. P-88)

121. The Student had been hospitalized six times and had failed to thrive in three different educational settings over the last three years. (Testimony Parent; Exh. P-75)

122**.** The Parent did not willfully refuse evaluations or to sign consent. The Parent sought information that would enable informed consent; specifically, the qualifications of the proposed evaluators, and the parameters of the evaluations. Not all of the requested information was provided to the Parent prior to commencing the Hearing. Additionally, while the Parent sought to impose certain limitations on the Board's contact with providers, these limitations were mostly limited to allowing the Parent to be present when such communications occurred with the Board. (Testimony Parent, Testimony Schiffer; Exhs. P-37, P-67, P-99)

123**.** Dr. Abramovich has evaluated thousands of students over the past thirty years. During that time, she has only recommended one or two residential placements, and has never recommended a residential placement for the Board in the eight to ten years she has been the Board's consultant. Dr. Abramovich opines that every patient she has seen return from residential had more problems, all residential programs are the same, and warned against the aggressive and sexually inappropriate behaviors present in residential programs. (Testimony Dr. Abramovich)

124**.** The Student requires residential therapeutic educational placement for 2008-2009. Chamberlain is an appropriate placement. (Testimony Parent, Testimony Dr. Papolos, Testimony Dr. Mattis, Testimony Lannigan, Testimony Schiffer)

CONCLUSIONS OF LAW

1. The Student qualifies for, and is entitled to receive, a free and appropriate public education with special education and related services under the provisions of state and federal laws. CGS §10-76, et seq. and the Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. §1401, *et seq.*

2. IDEA opens the door of public education to children with disabilities. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 192 (1982). Under IDEA, a local education agency ("LEA"), such as the Board, must provide to each qualifying student a free appropriate public education ("FAPE") in the least restrictive environment ("LRE"), including special education and related services. 20 U.S.C.§1401(18).

3. The purpose of IDEA is to ensure that all children with disabilities have available to them FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living" and to "ensure that the rights of children with disabilities and parents of such children are protected . . ." 20 U.S.C. §1400 (d)(1).

4. An "appropriate" education is one that is reasonably calculated to confer some educational benefit. *See Board of Educ. of the Hendrick Hudson Central Sch. Dist v. Rowley*, 458 U.S. 176, 206-7 (1982); *Walczak v. Florida Union Free Sch. Dist*. 142 F.3d 119,130 (2d Cir. 1998).

5. "Special Education" means: "specially designed instruction at no cost to parents to meet the unique needs of a child with a disability." 20 U.S.C. §1401(25).

6. "Related Services" means: transportation, and such developmental, corrective, and other supportive services (including speech/language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions in children. 20 U.S.C. §1401(22).

7. The standard for determining whether FAPE has been provided is set forth in *Rowley, supra*. The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second, whether the IEP is "reasonably calculated to enable the child to receive educational benefits." *Rowley, supra*, at 206-207.

8. The second prong of *Rowley* requires a findings that the IEP is "reasonably calculated to enable the child to receive educational benefit." The Supreme Court, has made clear that "appropriate" under the IDEA does not require that the school districts "maximize the potential of handicapped children." *Walczak v. Florida Union Free School District*, 142 F.3d 199, 130 (2d. Cir.1998)), citing *Rowley, supra*. Rather, school districts are required to provide, as the "basic floor of opportunity . . . access to specialized services which are individually designed to provide educational benefit to the

handicapped child." *Rowley, supra*, 458 U.S. at 201; *see also K.P. v. Juzwic*, 891 F. Supp. 703, 718 (D.Conn. 1995) (Goal of IDEA is to provide access to public education for disabled students, not to maximize a special education child's potential). In this Circuit, the Court of Appeals has said that the proper gage for determining educational progress is "whether the educational program provided for a child is reasonably calculated to allow the child to receive "meaningful' educational benefits." *Ms. B. v. Milford Board of Education*, 103 F.3d 1114, 1120 (2d Cir.1997). The Court of Appeals has also cautioned that meaningful educational benefits are "not everything that might be thought desirable by loving parents." *Tucker v. Bay Shore Union Free School Dist*., 873 F.2d 563, 567 (2nd Cir.1989). "Clearly, Congress did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial." *Hall v. Vance County Bd. of Educ*., 774 F.2d 629, 636 (4th Cir.1985). "Of course, a child's academic progress must be viewed in light of the limitations imposed by the child's disability." *Ms. B. v. Milford*, *supra* at 1121. When determining the appropriateness of a given placement courts will also consider evidence of a student's progress in that placement.

9. In order to ensure that the balance of services required to meet these goals is specifically fitted to the particular child, the IDEA requires that each child receive an Individualized Education Program. The IEP is intended to be "the result of collaborations between parents, educators, and the representatives of the school district." *Lillbask v. Connecticut Dep't of Educ*. 397 F.3d 77, 2005 U.S. App. LEXIS 1655 (2d Cir.Feb. 2, 2005). While the IEP does not have to maximize the child's educational potential it must provide "meaningful" opportunities and the possibility for more than 'trivial advancement." *Walczak* 142 F.3d at 130. Reviewing the totality of the evidence, the Board was aware of the Student's multiple hospitalizations resulting from psychiatric issues, including incidents that occurred at school.

10. The IEP serves as the centerpiece of a student's entitlement to special education under the IDEA. *Honig v. Doe*, 484 U.S. 305, 311 (1988). The primary safeguard is the obligatory development of an IEP which must contain a statement of the child's current educational performance, including how his disability affects his involvement and progress in the general curriculum, and a statement of "measurable annual goals, including academic and functional goals, designed to (aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (bb) meet each of the child's other educational needs that result from the child's disability." 20 U.S.C. §1414(d)(1)(A)(ii); 34 CFR §300.320(a)(2)(I); *Roland M. V. Concord School Committee*, 910 F.2d 983, 987 (1st Cir. 1990), *cert. denied* 499 U.S. 912 (1991).

11. In developing an IEP, the PPT must consider the strengths of the child, the concerns of the parents, the results of the initial or most recent evaluations, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a)(1). Courts must also consider whether the program is "individualized on the basis of the

student's assessment and performance" when determining the appropriateness of an IEP. See *A.S. v. Board of Education of West Hartford*, 35 IDELR 179 (D.Conn. 2001), *aff'd* 47 Fed. Appx. 615 (2d Cir.2002) (citing *M.C. ex rel. Ms. C. v. Voluntown Bd. of Educ*., 122 F. Supp. 2d 289, 292 n.6 (D.Conn. 2000).

12. The IEP must set forth goals and objectives which provide a mechanism to determine whether the placement and services are enabling the child to make educational progress. 20 U.S.C. §1401(a)(20). Connecticut courts have determined that in order for an IEP to be found appropriate, it must provide more than mere trivial advancement, it must be one that is " . . . likely to produce progress, not regress." *Mrs. B. v. Milford B.O.E.,* 103 F.2d 1114, 1121 (2d Cir 1997). The student's capabilities, intellectual progress and what the LEA has offered must be considered along with grade promotions and test scores in determining whether the program offered is reasonably calculated to confer a nontrivial or meaningful educational benefit to the child. See. *Hall v. Vance County Bd. of Ed.* 774 F.2d 629, 635 (1985). Objective factors such as passing marks and advancement from grade to grade can be indicators of meaningful educational benefits but are not in and of themselves dispostiive. See. *Mrs. B. v. Milford Bd. of Ed*. 103 F.3d 1120, (2d Cir. 1997).

13. In order for a given alleged procedural violation to be considered sufficiently significant to render invalid a proposed IEP, a procedural violation must have resulted in a denial of FAPE to the student. IDEA provides:

> (i) In general, Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.
>
> (ii) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies --
>
> (I) impeded the child's right to a free appropriate public education;
>
> (II) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parent's child; or
>
> (III) caused a deprivation of educational benefits.
>
> (iii) Rule of construction. Nothing in this subsection shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this subsection.

20 U.S.C. §1415(f)(3)(E); 34 CFR§300.513. As courts within this circuit have held subsequent to the 2004 amendments, "[p]rocedural flaws do not automatically require a finding of a denial of FAPE" *Matrejek v. Brewster Cent. Sch. Dist*. 471 F.Supp. 415, 419 (S.D.N.Y. 2007); *see also "M" v. Ridgefield Bd. of Educ. No*. 3:05-CV584 (RNC), 2007 U.S. Dist. LEXIS 24691, at #21n. 8 (D.Conn. Mar. 30, 2007) (citing cases from various circuits that held that a plaintiff must demonstrate that procedural errors by the district

resulted in the denial of a FAPE). "Only procedural inadequacies that cause substantial harm to the child or his parents -- meaning that the individual or cumulative result is the loss of educational opportunity or seriously infringe on a parent's participation in the creation or formulation of the IEP - constitute a denial of a FAPE." *Mattrejek, supra*, at 419.

14. Procedural safeguards are set forth in 20 U.S.C. §1415 and 34 CFR §§300.500, *et seq.*. Failure by the Board to develop an IEP in accordance with procedures mandated by IDEA, in and of itself, can be deemed a denial of FAPE. *Amanda J. ex rel Annette J. v. Clark County Sch.Dist.,* 267 F.3d 877, 9th Cir (2001).

15. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation "*must* be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child;" (emphasis added.) 34 CFR §300.502(c), 20 U.S.C. §§1415(b)(1) and (d)(2)(A).

In October 2007, Christina Lee, AuD, CCC/A performed an auditory processing evaluation. Ms. Lee recommended a speech and language evaluation. Ms. Lee identified an auditory processing disorder that is a contributing factor to the Student's learning difficulty. The speech and language evaluation was not performed.

Additionally, In May 2008, June 2008, and August 2008, the Parent provided the Board with copies of the evaluations and recommendations of Dr. Papolos, a renowned expert in childhood bipolar who is highly regarded by his peers, Dr. Mattis, a Board Certified Clinical Neuropsychologist, and Dr. Corson, the Student's treating therapist. All of these providers recommended a therapeutic residential setting identifying, among other factors, the detrimental effect of multiple transitions and that the Student was rapidly declining academically, emotionally, socially, and behaviorally resulting in multiple hospitalizations and involuntary discharge from IEA.

The Board virtually ignored all of these evaluations, desired to have the Board's psychiatrist evaluate the Student, and recommended a placement at High Road without adequate indicia of why this would be an appropriate placement given the totality of the information presented. The Parent investigated High Road and determined that it was not appropriate in that, among other things, it utilizes similar behavior management techniques as NVS from which the Student was previously removed by agreement due to dissatisfaction with the program.

16. The Parent also claims that the Board failed to convene a PPT. The record establishes that on June 11, 2008, the PPT was continued to reconvene on June 23, 2008 in order for the Parent to have an opportunity to consider the Board's recommendation for placement at High Road. The June 23, 2008 PPT was postponed as the Parent needed more time to consider the recommendation when High Road could

not meet with her until July 1, 2008. The Board commendably attempted to reconvene the PPT throughout July 2008 and proposed multiple dates to the Parent. However, the Parent was unavailable and the parties ultimately agreed to reconvene the PPT on August 7, 2008. The Board cancelled the August 7, 2008 PPT as it insisted that the special education teacher from IEA was required to participate in the PPT. The teacher had a serious automobile accident and was unexpectedly unavailable. The Student was on the eve of commencing the 2008-2009 school term. The Parent claimed that the IEA special education teacher could have been excused since she had already participated in the June 11, 2008 PPT, had no contact with the Student thereafter, the August 7, 2008 PPT was the continuation of the June 11, 2008 PPT, and she had anything further to offer. The Parent also proposed that a paraprofessional or other substitute could have participated instead of the special education teacher.

While the special education teacher is a necessary participant of the IEP Team pursuant to 34 CFR §300.321, "A member of the IEP Team . . . may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if . . .(i)The parent, in writing, and the public agency consent to the excusal; and (ii) The member submits, in writing to the parent and the IEP Team, input into the development of te IEP prior to the meeting." 34 CFR §300.321(e)(2); 20 U.S.C. §1414(e)(1)(B)-(d)(1)(D).

The Board's endeavor to include the Parent in the decision-making process by, among other things, awaiting her review and comment regarding High Road was laudable. Indeed, the record establishes a comprehensive and voluminous history of the Board involving the Parent in planning for this Student, initiating and responding to extensive communication, and conscientiously endeavoring to accommodate her requests. The Parent contends that the Board failed to convene a PPT. The Board had repeatedly attempted to contact the Parent during June and July to schedule a PPT during those months. The failure to convene a PPT during the balance of June and July 2008 was not the fault of the Board.

The Board may have been able to proceed with the August 7, 2008 PPT without the IEA special education teacher. However, the Board believed at the time it was reconvening the PPT that the presence of the special education teacher was required and necessary. Nothing in the record establishes otherwise. The Board acted entirely in good faith when it postponed the August 7, 2008 PPT especially given the seriousness and impact of the disputed issues. Accordingly, the Board did not violated procedural safeguards by failing to convene a PPT.

17. The Parent also contends that there was procedural violation by way of a breach of confidentiality, however, there was insufficient evidence in the record to support this contention and the Parent failed to meet her burden of proof in this regard.

18. Even if the procedural violations do not result in a denial of FAPE, the IEP

proposed for the 2008-2009 must be appropriate. The January 3, 2008 IEP and the May 14, 2008 IEP were not appropriate as evidenced by the Student's consistent decline academically, behaviorally, socially, increase in discipline, ultimate involuntary discharge from IEA, and failure to receive educational benefit. There is no question that the Student's increasing behavioral and psychiatric issues were becoming a growing concern. Indeed, the January 3, 2008 PPT acknowledged that his placement at IEA was in jeopardy. While shortening his school day effectively may have alleviated the Board's concerns about controlling the Student's behavior and preventing disruptions at school by dismissing him early, but it failed to address the Student's needs or provide alternative instruction. Indeed, the Student was deprived of instruction in science and social studies as well as the required OT and counseling because of the shortened school day. No alternative plan was instituted to provide this instruction and services. Hence, the Board thereby failed to provide FAPE.

In May 2007 the Student was noted to have made either satisfactory progress or limited progress as regards his goals and objectives. By May 2008, he made no progress. Thereby, the Student was regressing rather than progressing.

Moreover, despite that the January 3, 2008 IEP required one hour per week of counseling and OT, as well as special education instruction, the PPT shortened the Student's school day thereby truncated his services so as to deny FAPE.

As aforesaid, in October 2007, Ms. Lee evaluated the Student and recommended that he receive a speech and language evaluation, which as never performed. According to Dr. Papolos, an appropriate speech and language program is critical for the Student.

The Student failed to achieve progress while placed at IEA or achieve educational benefit. Nothing in the record establishes that High Road would provide such benefit or that placement at MCDS is appropriate.

19. A Board may not predetermine a placement for a student with a disability and must come to the table with an open mind and consider the unique needs of the child. *Deal v. Hamilton County Bd. of Ed.*, 42 IDELR 109 (6th Cir. 2004) Participation of parents must be more than a mere form; it must be meaningful. *W.G.,* 960 F.2d at 1485; *see also Knox County Sch.,* 315 F.3d at 694-95. The preponderance of the evidence establishes that although the Board referred the Parent to High Road and sought to place the Student at MCDS, it failed to consider any program other than High Road at the June 11, 2008 PPT and was on notice as of the January 3, 2008 and the May 14, 2008 PPT that the Student may be discharged from IEA. The preponderance of the evidence also establishes that the Board did not consider the individual needs of the Student. High Road is another therapeutic day school. The Parent attested that she had investigated and rejected that school previously. Accordingly, by proposing High Road the Board failed to consider school avoidance, transitions, and the other issues and individual needs of the Student that caused IEA to be an inappropriate placement.

The Board was required to maintain a continum of alternative education placement for the Student, 34 CFR §300.551(a), including alternate schools. In this situation, after ignoring the recommendations of all treating providers, and the two experts, and months of hospitalization, seclusion, and psychotic episodes, including actual notice on May 14, 2008 that one more incident would result in the Student's discharge from IEA, the Board proposed High Road, without any analysis as to how it would meet the Student's increasingly complex needs, and failed to revise the IEP to address the Student's needs. The only stated difference between IEA and High Road is that High Road uses restraints. Dr. Papolos testified credibly that restraint was not appropriate behavior management and could exacerbate, rather than alleviate, the Student's psychiatric issues.

20. The Board has the burden of proof by a preponderance of the evidence that the program for the 2006-2007, summer 2007, 2007-2008, summer 2008, and 2008-2009 school years was appropriate. *RCSA* §10-76h-14(a). *See also, Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 122 (2d Cir. 1998). The Board met its burden of proof as to the appropriateness of the program offered to the Student in 2006-2007 and Summer 2007 as, among other things, the Student had made either satisfactory or limited progress in his identified goals and objectives. The Board failed to meet its burden of proof as regards 2007-2008. The record establishes that the Student regressed, rather than progressed, failed to achieve any meaningful progress or derive any educational benefit, and he was denied FAPE.

The Student's IEP included ESY due to his being unavailable for learning during the school year. Generally, ESY is provided for a Student in order to prevent the amount of gains achieved by a Student from being jeopardized *Student v. Preston B.O.E.*, CT DOE Case No. 06-109, p. 10 (12/27/06); *M.M. by D.M. & E.M. v. Sch. Dist. of Greenville County*, 37 IDELR 183 (4th Cir. 2002); *J.H. by J.D. & S.S. v. Henrico County Sch. Bd.*, 38 IDELR 261 (4th Cir. 2003). An ESY program cannot be arbitrarily limited by the Board. *Id.*; 34 CFR §300.309 (a)(3)(ii). For ESY 2008, the Board proposed a program at High Road but failed to offer an alternative ESY when the Parent first wanted to view the placement and High Road could not accommodate her until after July 1, 2008. Accordingly, no ESY services were being provided. The Board failed to provide ESY and, thereby, failed to provide FAPE.

The Board also failed to meet its burden of proof as regards the 2008-2009 school year. Although the Board recommended placement of the Student at MCDS for diagnostic and evaluation it failed to establish that this was an appropriate placement. As Dr. Papolos attested, the Student has already been diagnosed. There was no evidence that the Board disagreed with the Student's diagnosis. As Dr. Papolos also attested, the Student has been repeatedly evaluated. The Board has all of these evaluations, with the exception of speech and language which the Board did not seek prior thereto despite the recommendations of Ms. Lee in October 2007. Moreover, all of the evaluations can be

and typically are performed without such placement. There was no showing that the evaluations were needed to decide placement. As regards the behavioral data, the Board failed to establish that the behavioral data it would obtain from an eight week diagnostic placement was required so as to warrant such placement given the extensive data already available from the previous two therapeutic placements.

Dr. Papolos attested that the Student had so deteriorated so as to require residential therapeutic placement in order to receive educational benefit. Further, "it would be detrimental to the Student to pull him out of a program that's for the first time helping him succeed, and put him into a program that is unnecessary and would retard his progress. . . It is a set up for disaster and a very bad plan. Dr. Papolos' qualifications and expertise are beyond reproach. Even the Board's expert attested as to his being a renowned expert. Moreover, he has been the Student's treating psychologist for several years and very famiiar with him. Accordingly, the Student should not be placed at MCDS for diagnostic and evaluation.

21. Pursuant to 34 CFR §300.342 (a), at the beginning of each school year the public agency shall have an IEP in effect for each child with a disability within its jurisdiction. The Board failed to provide an appropriate program for the 2008-2009 school and, thereby, denied FAPE.

22. Both parties agree that the Student cannot be educated in the mainstream or even in a public school and that an alternative placement is required. The argument is whether a clinical day school or a residential therapeutic school is more appropriate. 34 CFR §300.39 states that special education includes "instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings . . ."

23. The least restrictive environment does not trump the requirement that a child receive FAPE. If a child's placement does not provide "significant learning" or "meaningful benefit" to the child, and a more restrictive program is likely to provide such benefit, then the child is entitled to be placed in that more restrictive program. *See Dighton-Rehoboth Regional Sch. Dist*. 4 ECLPR 721 (SEA MS 2006). The record establishes that the Student made either none or limited progress from 2007 through June 2008. He failed to master any goals.

24. The federal law requires that children with disabilities be educated with their non-disabled peers to the maximum extent appropriate. 20 U.S.C. §1412(a)(5); 34 CFR §300.114. However, a district must make any placement and service decisions for a child based on their individual needs. 20 U.S.C. 1401(29); 34 CFR§300.39, *see also Oberti v. Board of Education of Borough of Clementon School District*, 995 F.2d 1204,1214 (3d Cir. 1993). A comparison must be made between the educational benefits the child will receive in the regular classroom and the benefits the child will receive in a segregated program. *Id.* at 1220. A segregated setting may be the most appropriate and least restrictive environment for a student. *Connecticut Final Decision*

and Order 00-180, Conclusion of Law No.6 (November 30, 2000) (citing *DeVries v. Fairfax County School Board*, 882 F.2d 876 (Cir. 1989)). Where a student demonstrates stagnant or negative progress in the mainstream, a private placement that provides appropriate supports and services for the student to make progress becomes the least restrictive environment. *W.M. and K.M. v. Southern Regional Bd. of Educ.*, 46 IDELR 101 (D.N.J. 2006), *see also, J.D. v. N.Y.C. Dept. of Educ.*, 550 F.Supp.2d 420 (D.NY 2008). It is well settled that the least restrictive environment for a child depends on his unique needs.

25. "[I]f placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child." 34 CFR §300.104; 20 U.S.C.§1412 (a)(1); §1412 (a)(10)(B). "[A]s long as the child is properly educable only through a residential placement, when the medical, social or emotional problems that require hospitalization or create or are intertwined with the educational problem, the states remain responsible for the costs of the residential placement." *Mrs. B. v. Milford Bd. of Ed.,* 103 F.3d 114, 1122 (2d Cir. 1997); *Student v. Region No.9 Board of Education,* CT Case No. 06-170, 5/11/07 at 35. In the 2nd Circuit, it is well settled that if a psychological placement is "due primarily to emotional problems" or "to alter a child's regressive behavior at home as well as within the classroom," the service must be provided under the IDEA if "it is necessary to ensure that the child can be properly educated." *Mrs. B. v. Milford Bd. of Ed..*, *supra; see also J.B. v. Kinningly Bd. of Ed; Student v. Region No. 9 Bd. of Ed.,* at 36. When a student's emotional problems, which require residential treatment, are completely intertwined with educational difficulties, the school board is responsible for the residential placement. *Student v. Norwalk Board of Education,* Case No. 03-023, 10/17/03. The Student requires a therapeutic residential placement in order to benefit from his educational program.

Experts testified that one of the Student's major stressor is his feelings about school and the feeling of inadequacy with regard to learning. In addition, destabilization and difficulty with transitions affects the Student's ability to be educated; this leads to a vicious cycle of stress caused by his learning difficulties thereby leading to greater stress. The Student's educational, psychological, and psychiatric needs are so great and so encompassing that they can only be appropriately provided in a therapeutic residential setting.

26. Whether the parents of a disabled child are entitled to reimbursement for the costs of a private school turns on two distinct questions: first, whether the challenged IEP was adequate to provide the child with FAPE; and second, whether the private educational services obtained by the parents were appropriate to the child's needs . . . Only if a court determines that a challenged IEP was inadequate should it proceed to the second question. *M.C. ex rel. Mrs. C. V. Voluntown Bd. Of Ed.*, 226 F.3d 60, 66 (2d Cir. 2000) As set forth herein, the IEP was not adequate to provide the Student with FAPE.

Further, there is inadequate evidence upon which to find that High Road would have been an appropriate placement. The proposed program/placement of MCDS was not appropriate. Hence, the next inquiry is whether Chamberlain is an appropriate placement.

27. When it is determined that the Board's program is inappropriate, the parent is entitled to reimbursement if the parent's private school placement is appropriate. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985). In placing the Student at Chamberlain, the Parent made a unilateral placement. The Board argues that Chamberlain fails to provide the services necessary for the Student including, but not limited to, a special education teacher in the classroom, among other things. While the Board raised some legitimate concerns about the Chamberlain program, these concerns are not sufficient to render the Parent's unilateral placement inappropriate. The Parent has met the burden of proving that the educational services provided by Chamberlain are appropriate under IDEA. *Sch. Comm. Of Town of Burlington v. Dept. of Educ. Mass.,* 471 U.S. 359, 370 (1985); *Tatro v. State of Texas*, 703 F.2d 823 (5 th Cir. 1983), aff'd 468 U.S. 883 (1984), Chamberlain has been found to be an appropriate therapeutic residential placement, see *Student v. Fairfield BOE* Case No:06-170, May 11, 2007, where the Hearing Officer found that while Chamberlain was not perfect, it was appropriate for a student who required a therapeutic residential placement.

28. Parents seeking an alternative placement are not subject to the same main-streaming requirements as a school board. *MS. Ex rel S.S. v. Board of Education of the City of Yonkers*, 33 IDELR 183 (2nd Cir. 2000) citing *Warren G. V. Cumberland County School District*, 190 F.3d 80, 84 (3d Cir.1999). In selecting a unilateral placement, parents are not held to the same standards as are school systems *Florence County Sch. Dist. V. Carter*, 510 U.S. 7, 114 S.Ct. 361, 126 L.Ed. 2d 284 (1993). It is well settled that the unilateral placement does not have to meet the standards of a least restrictive environment (LRE), nor does the unilateral placement have to include certified instructors in special education 34 CFR §300.403(c), *M.S. ex rel S.. v Board of Education of the City of Yonkers* 33 IDELR 183 (2nd Cir. 2000) citing *Warren g. v. Cumberland County School District*, 190 F.3d 80, 84 (3d Cir.1999). The test is whether the parents' private placement is appropriate, and not that it is perfect.

29. Progress demonstrated in a private school that was unable to be achieved in the public school has been found to render the private school program appropriate. *G.W. v. New Haven Unified Sch. Dist.*, 46 IDELR 103 (D.Calif. 2006). The Student herein is reportedly flourishing at Chamberlain. Since his placement at Chamberlain on September 11, 2008, the Student has not been hospitalized despite the fact the fall is a very difficult time for him, and he has continued to make progress. Chamberlain has a positive behavioral management program, no time-out rooms, and provides opportunities for the Student to interact with non-disabled peers. Academics are 7.5 hours per day and the Student has attended all days. The Student attends class with the same seven

students and all his classes are held in one room, with the exception of a few specials, thereby mitigating the need for transitions. He receives individual counseling two times a week, group counseling one time per week, OT several times a week, and reading instruction 2-3 times per week with a Wilson based reading program. Furthermore, he is involved in the volunteer afterschool homework club where he receives additional assistance, as well as homework help from resident staff. He receives much 1:1 instruction, and has played on a soccer team that interacts with non-disabled peers, and has interacted with non-disabled peers at the YMCA. Since being at Chamberlain, the Student now believes he is a "learner" and has made progress by participating in the classroom, going to the blackboard, applying coping skills, participating in class and in the residence, and writing his longest book report to date. Since being at Chamberlain all of the reports are excellent. He adapted well. The Student is more available to learning and is progressing in the academic areas that he could not do before. He is more stable, there is less need to modify his medication, he has more control over himself than he has had in the past. He is receiving, as Dr. Papolos opined "all of the things that you would hope that a good school. . . would do for . . . a child like [the Student]".

30. The Board contends that the Parent refused to permit evaluations of the Student. Even if the Board was correct in this contention, 20 U.S.C. §1414(a)(1)(c)(ii) provides that the LEA may pursue evaluation if the parent refuses to consent to the reevaluation by utilizing the mediation and due process procedures under section 1415 of this title, except to the extent it is inconsistent with State law relating to parental consent. The consent was allegedly denied on June 11, 2008. State law does not bar the LEA's pursuit of evaluations. Both State and Federal law require only that the LEA must comply with the procedural safeguards outlined in 34 CFR 300.504 and the parental consent requirements of 34 CFR §300.505. However, reviewing the totality of the record, the Parent was not refusing any and all evaluations. The Parent sought information from the Board as regards the evaluator's qualification and what tests would be performed. Given that even the PPT acknowledged that the Student was fragile, had two psychiatric hospitalizations in the recent months, and that Dr. Papolos agreed that the Student could be harmed if an evaluator was not qualified, the Parent was entirely reasonable in this request. The record fails to contain evidence that the Board obtained this information from Dr. Abramovich or provided it to the Parent.

Significantly, on April 9, 2007, when the Parent desired to have an IEE Ms. Schiffer disagreed with having the IEE as it involved putting the Student through another battery of tests. Ms. Schiffer relied upon that the Student (a) does not like to be tested and does not perform optimally, (b) he would be better served by curriculum based measures that may guide the team to different instructional approaches which may have better outcomes, (c) although his poor academic growth is disconcerting, it is important to remember that the Student has been work avoidant for the majority of his prior several years of schooling. Ms. Schiffer urged the Parent to reconsider her request for an IEE.

31. Compensatory education is the "replacement of educational services the child should have received in the first place" and should "elevate [the Student] to the position he would have occupied absent the school board's failures. *Reid ex rel. Reid v. Board of Columbia,* 401 F.3d 516, 518, 524-27 (D.C. Cir. 2005). Hearing Officers have the authority to provide compensatory education as an equitable remedy for denial of FAPE. *Student v. Greenwich B.O.E.,* CT DOE Case No. 06-005 at 19; *Inquiry of Kohn*, 17 EHLR 522 (OSEP) (2/13/91) (citing with approval *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990); *Burr v. Ambach,* 863 F.2d 1071 (2d Cir. 1988), vacated, 492 U.S. 902, reaff'd, 888 F.2d 258 (2d Cir. 1989). Compensatory education has been recognized as an available remedy under IDEA for failure of the Board to provide FAPE. See, *K.P. v. Juzwic*, 891 F.Supp. 703 (D.Conn. 1995); *Burr v. Ambach*, 863 F.2d 1071 (2d Cir. 1988); *Mrs. C. v. Wheaton,* 916 F.2d 69 (2d Cir. 1990). Compensatory education is not appropriate herein as the Student is placed in the residential therapeutic setting. The Parent has failed to identify exactly what compensatory services she feels are appropriate. The Board is being ordered hereunder to pay for the cost of the placement and there are no identified services that should be provided in addition by way of compensatory education. Hence, there is no basis upon which to award compensatory education.

32. The cost of reimbursement may be reduced or denied if at the most recent IEP Team meeting that the parents attended prior to removal of the child from the public School, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to the child including stating their concerns and their intent to enroll their child in a private school at public expense; or at least ten business days prior to the removal of the child from the public school the parents did not give written notice to the public agency. 34 CFR §§300.148(d), et seq., 20 U.S.C.§1412(a)(10)(c). The cost of reimbursement may also be reduced or denied if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in 34 CFR §§300.503(a)(1) of its intent to evaluate the child including a statement of the purpose of the evaluation that was appropriate and reasonable but the parents did not make the child available for the evaluation or upon a judicial filing of unreasonableness with respect to actions taken by the parents. 34 CFR §§300.148(d)(2) 300.148(d)(3)), 20 U.S.C. § 1412(a)10(c). Here, the Parent did inform the August 26, 2008 PPT that she was rejecting the proposed placement, and intended to enroll the Student at Chamberlain. She was unable to inform the Board at the August 7, 2008 PPT because it was postponed. She also gave written notice. Although the Board correctly points out that it sought to have Dr. Abramovich evaluate the Student, the Parent requested information which the Board did not provide prior to the hearing, in order to determine whether such evaluation could be harmful. Given the totality of the circumstances, and the acknowledged fragility of the Student, the Parent's request was reasonable. Hence, the cost of reimbursement will not be reduced or denied.

33. The Parent is requesting reimbursement for evaluations and services privately

obtained. No evidence was presented during the hearing on this issue nor was this issue pursued. It is also unclear to which evaluations and services this refers. Nonetheless, in order to seek reimburse for private evaluations, the Parent was required to request an independent education evaluation at public expense, the Board must either file a due process complaint to request a hearing to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense. 34 CFR.§300.502; 20 U.S.C. .§.§1415(b)(1) and (d)(2)(A). There is no evidence that such request was made to the Board, hence, the Parent is not entitled to reimbursement.

34. Chamberlain is small, structured and appropriate for the Student.

35. The great weight of the evidence supports that the Student has made progress at Chamberlain. The Board shall reimburse the Parent for the cost of the private placement for 2008-2009 and the Student shall continue to be placed at Chamberlain as it is appropriate, providing him meaningful educational benefit.

FINAL DECISION AND ORDER

1. The Student should not be placed in a diagnostic evaluative placement at Manchester Clinical Day School;

2. The Board provided FAPE to the Student during 2006-2007, and summer 2007;

3. The Board failed to provide FAPE to the Student during 2007-2008;

4. The Board failed to provide ESY for summer 2008;

5. The Board failed to propose a program that would provide FAPE to the Student for the 2008-2009 school year;

6. The program at Chamberlain is appropriate and provides meaningful educational benefit to the Student;

7. The Board shall reimburse the Parent and pay for the cost of the private placement for the 2008-2009 school year;

8. The Board shall place the Student at Chamberlain for the 2008-2009 school year and shall convene a PPT meeting to write an IEP consistent with placement at Chamberlain;

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9. The Parent failed to meet her burden of proof that there was a breach of confidentiality;

10. The Board did not fail to convene a PPT.